

Legislative Bulletin.....May 6, 2010

Contents:

H.R. 5019—Home Star Energy Retrofit Act of 2010

Conservative Concerns

- ***Shifts Spending Decisions From Main Street to D.C.:*** “Cash for Caulkers” is another multi-billion dollar government scheme directed at picking winners and losers through cash hand-outs at a time when the federal government is already running \$1.5 trillion annual deficits.
- ***Cost:*** The bill authorizes an additional \$6.6 billion of spending to create more “green jobs.” This is in addition to the more than \$10 billion already spent by American taxpayers to implement “weatherization” programs with the goal of creating green jobs in the name of “energy efficiency.”
- ***Prioritizing Union Contracting:*** The bill provides specific and narrow definitions for what constitutes a “Certified Workforce.” Some conservatives believe that by allowing organizations like Laborers International Union to certify these requirements, H.R. 5019 is creating a distinct advantage for contracts to go to “union friendly” contractors. This is not only discriminating to contractors that do not use union labor, but may also diminish the effect of the rebate because the labor costs will be greater.
- ***Won’t Work:*** The “Energy Star” Program itself is already riddled with flaws and reports of fraud. A report issued by the Government Accountability Office revealed that the program was “[vulnerable to fraud and abuse](#).” Thirteen fake products, designed by auditors to purposely be inefficient, received the Energy Star rating.
- ***Bureaucratic Bonanza:*** Under the bill, the DOE is allowed to promulgate many of the regulations and requirements to implement the program within 30 days. Conservatives lack confidence that the administration will implement the program responsibly. The administration has already been [irresponsible](#) in handing out millions from the “stimulus” for weatherization projects – spending \$3.7 million to weatherize just 47 homes in Texas.
- ***Unconstitutional:*** The Constitution, in Article I, Section 8, Clause 3, grant Congress the power to regulate interstate commerce, ***NOT*** participate in it.

For more details on these conservative concerns on H.R. 5019, see below.

H.R. 5019—Home Star Energy Retrofit Act of 2010 or “Cash for Caulkers” (Rep. Welch, D-VT)

Order of Business: The bill is expected to be considered on Thursday, May 6, 2010 under a structured rule ([H.Res.1329](#)) that will provide for one hour of debate equally divided and controlled by the majority and minority, waives all points of order against consideration of the bill except those arising under clause 9 or 10 of rule XXI (earmarks & “pay-go”), provides for consideration of eight amendments, and provides one motion to recommit with or without instructions.

Summary: Totaling \$6.6 billion in total authorizations, the “cash for caulkers” proposal is a new federal program authorized, through the Environmental Protection Agency and Department of Energy, aimed at providing homeowners rebates to conduct energy efficiency upgrades for home improvement projects. The bill establishes two programs, both of which would provide rebates to individuals or eligible contractors for energy efficiency upgrades of residential dwellings.

The Silver Star program provides rebates for approved energy-saving installation projects including air sealing; attic, wall, and crawlspace insulation; duct sealing or replacement; and replacement of existing windows and doors, furnaces, air conditioners, heat pumps, water heaters and appliances with high-efficiency models. Homeowners can receive between \$1,000 and \$1,500 for each measure installed in the home, or \$250 for upgrades of preapproved appliances. The rebates cannot exceed a total of \$3,000 or 50 percent of the total project cost, whichever is less. This program runs for one year.

The Gold Star program requires households to conduct a comprehensive energy audit and then implement measures, through “accredited contractors,” designed to provide greater energy efficiency in a residential home. If consumers can increase energy efficiency by 20%, they can receive a rebate of up to \$3,000, plus an additional \$1,000 incentive for each additional 5% of energy savings. The total rebate cannot exceed at total of \$8,000 or 50 percent of the total project costs. This programs runs for two years. All “accredited contractors” participating in the Gold Star program must be accredited though established under Building Performance Institute (BPI) or standards approved by the Secretary of Labor in consultation with Administer of the Environmental Protection Agency (EPA)

Some of the highlights of the specific portions of the bill include:

- **Definitions:** The bill defines a “certified workforce” as residential energy efficiency construction workforce in which all skills are certified by the **skills established by the Building Performance Institute (BPI), North American Technician Excellence, the Laborers’ International Union of North America,** third party skills established within a state operated by the Home Builders Institute in connection with Ferris State University, or other standards established by the Secretary of Labor in consultation with Administer of the Environmental Protection Agency (EPA).
- **Home Star Rebate Retrofit Program:** Requires the Secretary of Energy, in association with the EPA Administrator and Secretary of Treasury, to establish a federal rebate

processing system, national Home Star retrofit website, publish protocol forms for contractors, vendors, and quality assurance providers within thirty days of enactment.

The section also defines and establishes the requirements for a “qualified contractor” through mandating compliance with state licensing requirements, warranties, and providing notice and agreeing to pass the full rebate value along to the customer.

The bill give the Secretary the authority to appoint any amount of personnel necessary to administer the Home Star program with a rate of pay up to the GS-15 level (\$115,300), retain consultants, expedite contracting requirements, and rulemaking authority to establish energy efficiency requirements within the new program.

Within 180 days of the bill, H.R. 5019 requires the Secretary to provide Congress with a state-by-state analysis of the Home Star retrofit rebate program and grants the authority to prospectively adjust the rebate amounts “as necessary” to optimize energy efficiency. The bill allows states to enter public-private partnerships with utilities, energy service companies, and others to help market Home Star, assist with consumer financing, and implement installation.

Finally, H.R. 5019 requires states to give priority to comprehensive retrofit programs already in existence before the Home Star program, prevent the duplication of other federal programs that already exist that provide funds to states for home or appliance energy efficiency purposes, and prohibits a household from receiving rebates through both the Silver Star and Gold Star programs.

- **Rebate Aggregator:** The bill requires the Secretary to establish a network of rebate aggregator to reimburse contractors and vendors for discounts provided to homeowners for energy efficiency retrofit work. Within 30 days of the act, the Secretary shall identify at least one rebate aggregator in each state able to accept rebate applications from any qualified contractor. Within 90 days, rebate aggregation services must be available to all homeowners.

The bill requires rebate agitators to maintain a federal rebate processing system (FRPS) and reimburse the contractor/vendor within 30 days of receiving the rebate form from the contractor/vendor. The bill also establishes employment qualifications to become an agitator, such as being a current employee of a Home Performance with Energy Star Provider or another state residential energy efficiency retrofit program.

All rebates are not treated as taxable income to homeowners or treated as a substitute for any tax credit allowed under 25C of IRS Code for eligible work.

- **Silver Star Program:** The bill establishes a Silver Star Home Energy Retrofit Program to reimburse participating contractors and vendors for providing discounts to the owner of a home for installing energy efficient items approved under the program. The rebate reimburses contractors or vendors for providing a discount equal to the rebate's full value to the homeowner.

The bill allows the rebates to apply to the assembly and installation of insulation, windows, window film, sealants, doors, heating and cooling replacement systems, and water heaters. The bill also details what minimum energy efficiency requirements are needed to qualify for a specific product to qualify for the rebate. A \$1,000 rebate is

available for applicable windows and heating and cooling systems. Attic insulation, wall insulation, and air sealing rebates are capped at \$1,500 per product. Additionally, rebate amounts between \$50 and \$500 are available for doors, storm windows, window film, and lower efficiency water heaters. The maximum total rebate amount pursuant to the Silver Star program is the lower of \$3,000 or 50% of the total cost of installed measures.

The program requires 20% of the retrofits performed by a qualified contractor to be subject to field verification by an independent quality assurance provider. If the qualified contractor uses a “certified workforce,” 10% of the retrofits are subject to an audit.

The bill only permits an individual to participate in the Silver Star program without the use of a qualified contractor for attic, wall, and crawl space insulation and air-sealing products. The rebate amount is the lower of 50% of the purchase price of the qualified items or \$250 and redeemed at the point of sale.

- **Gold Star Program:** The bill establishes a Gold Star Home Energy Retrofit Program to reimburse participating contractors and vendors for providing discounts to the owner of a home that achieve “whole” home energy savings. Products can include those listed in the Silver Star program, but may also include anything else that can be demonstrated to improve energy efficiency when installed and operational. In order to achieve a rebate, an energy audit or analysis of the home must be performed before and after the energy efficiency retrofit. H.R. 5019 lists acceptable documentation from the software program established under the Weatherization Assistance Program for Low-Income persons established under the 2007 Energy Policy and Conservation Act, an equivalent performance test established by the Secretary, or other software previously established through the IRS.

The bill establishes rebates for homeowners to be up to \$3,000 for a 20% reduction in whole home energy consumption and an additional \$1,000 for each additional 5% reduction. The rebate maxes out at the lower of \$8,000 or 50% of total retrofit costs.

The program requires 15% of the retrofits performed by a qualified contractor to be subject to field verification by an independent quality assurance provider. If the qualified contractor uses a “certified workforce,” 10% of the retrofits are subject to an audit. Audits are not required if the energy rating agency is already approved by the state or certain agencies of the federal government.

- **Public Information Campaign:** Requires the EPA and DOE to develop an education campaign that describes the benefits of Home Star retrofits and the availability of rebates under Gold Star and Silver Star programs within 60 days of enactment. Public education efforts through EPA are funded by an allocation of 0.2% of Home Star funds, or a cost of \$12 million.
- **Home Star Energy Efficiency Loan Program:** H.R. 5019 allows the Secretary to establish a Home Star Energy Efficiency Loan Program to provide funds to states to provide additional low interest financing for qualified entities established under the bill. 75% of the funds will be dedicated to using the formula established under the EPCA of 2007 for energy conservation plans. 25% of funds will be based on meeting other program objectives including providing loans to low-income areas.

- **Funding:** This section of the bill to establish the Silver and Gold programs authorizes \$6 billion for FY2010 and FY2011, to remain available until expended. Up to 9% of the total appropriations can be used by the Secretary to provide grants to states to cover administrative costs, finance mechanisms, and coordination of existing programs. At least 60% of all those funds must be used for the Home star Energy Efficiency Loan program.

Within 30 days of enactment, the DOE will distribute 25% of the funds to state energy offices to implement the Silver Star program based on the allocations establishes under the EPCA of 2007. The remaining 75% will be distributed as “to best support the objectives of achieving energy efficiency gains, employment of underemployed workers, and implementing quality assurance programs and frameworks in participating states.”

Up to 5% of the programs funds may be to provide monetary compensation to rebate agitators and quality assurance providers to optimize energy efficiency. Up to 2.5% of the funds can be used for Home Star to track rebates, and offer technical assistance to the states to comply. Public education efforts through EPA are funded by an allocation of 0.2% of Home Star funds.

Of the remaining funds not used by the state grant program outlined above, the Silver Star program will receive the remaining two-thirds of funding, and the Gold Star will receive the remaining third. Any leftover funds still remaining in the Silver Star program after one year will be transferred to the Gold Star program until it ends. If funds exist after 2012, the remaining funds will be returned to the general Treasury.

- **Energy Efficient Manufactured Homes:** The bill allows the Secretary to provide grants to states to provide \$7,500 rebates to homeowners who wish to replace a manufactured home built before 1976 with an Energy Star-rated manufactured home. In order to receive the rebate, the previous residence must be demolished, appropriately recycled, and replaced with an Energy Star home. Participants must have a household income of less than 80% of the area median income in order to be eligible for the program. The bill authorizes \$200 million for FY2010 and \$400 million for FY2011 and limits 5% of this funding to be available to DOE for administrative expenses.

Background Information: Similar programs with the main goal of creating more energy efficient homes already exist. The programs fall under the Energy Efficiency and Conservation Block Grant (EECBG) Program, which is primarily funded by the federal “stimulus” package.

Just last month, Vice President Biden introduced the [Retrofit Ramp-Up Project](#). The project seeks to provide twenty-five U.S. communities \$452 million dollars from the \$2.8 billion stimulus appropriation for energy-efficient, green projects to “pioneer innovative models for rolling out energy efficiency to hundreds of thousands of homes and businesses in a variety of communities” in a cost-efficient (for everyone except the American taxpayer) way. The programs also aim to inspire other states and cities to adopt eco-friendly measures to cut costs and “go green.”

The [Weatherization Assistance Program](#) currently uses \$5 billion in stimulus funding and roughly \$210 million in FY 2010 appropriations to provide low-income families with energy-efficient technologies to make their energy bills less expensive. The goal is to help low-income families while lowering American dependency on foreign resources. The program provides grants to States and manages activities conducted by various non-profits and local contractors. Ten percent

of the funds granted by the program through the Recovery Act are used to training and technical assistance.

Conservative Concerns: Some conservative have expressed concern that H.R. 5019 would shift financial resources and decision making from families to Washington DC. Government provided subsidies will create a dependence that will actually stifle long term investment in a sector. As the Wall Street Journal points out, “cash for caulkers is a federally sponsored sale at the local Home Depot or Lowe's through 2011, at least for those products and services that the government has decided are environmentally correct.” In addition, some conservatives have expressed concern over the cost of H.R. 5019 because it authorizes an additional \$6.6 billion of spending to create jobs in the construction industry. This is in addition to the more than \$10 billion already spent by American taxpayers to implement “weatherization” programs with the goal of create jobs in the name of “energy efficiency.”

Some conservatives have also expressed concern that H.R. 5019 creates a distinct incentives for contracts to go to “union friendly” contractors. The bill allows accreditation for acceptable workforce certification to come from the skills established under Building Performance Institute (BPI), North American Technician Excellence, and the Laborers’ International Union of North America. Some conservatives have expressed concern this is not only discriminating to contractors who do not use union employees, but also raises the cost of each project because union labor can be more expensive than non-union labor. In addition, some conservatives have expressed that there are less than 500 BPI accredited contractors across the entire U.S. 92% of them are located in New York and New Jersey. This could lead to a disproportionate amount of funding going to these two locations instead of the thirty-six states without BPI approved contractors.

Some conservatives have expressed concern that weatherization programs and the “Energy Star” program do not work or provide little benefit for the high-cost. Recently the Government Accountability Office revealed that the current Energy Star program was “[vulnerable to fraud and abuse.](#)” About a dozen fake products were introduced by Congressional auditors posing as companies and received the Energy Star rating. Items introduced included a gasoline-powered alarm clock and an air purifier that was nothing more than an electric space heater with a feather duster taped to the top.

In addition, a [report](#) issued by the Department of Energy states that of the nearly \$5 billion in stimulus funds used for the Weatherization Assistance Program, only \$368.2 million was used for actual weatherization projects. The report also shows that of the ten most highly-funded areas in the program, only two cities were able to weatherize just over two percent of planned units. The report also states that the high number of jobs promised by the project did not materialize as planned, and the level of energy consumption did not decrease dramatically.

A separate DOE [report](#) states that the Energy Star’s program managers failed to provide adequate information to the DOE in regards to the progress and effectiveness of the program. Therefore, a comprehensive study on the results of the Energy Star program was difficult to produce.

Some conservative have also expressed concern that the rebates established under the Silver Star and Gold Star programs go almost exclusively to the certified contractor providing the upgrades. This could lead to the potential for fraud or abuse since the homeowner, who the rebate is ultimately targeted for, never sees the actual check from the government and is taking the passed down savings in good faith.

In addition, the Silver Star program lists only 13 specific energy savings measures that qualify for rebates. This leaves many other items that could lead to energy savings off the list of federally approved “energy efficient” products. Many conservatives believe it should not be the role of government to pick “winners” and “losers” in a free market.

Finally, some conservatives have expressed concern the bill contains \$12 million for a public awareness campaign. Some conservatives believe this is an example of extreme government waste. Since the government is already providing \$6.6 billion in handouts, it is safe to assume the private sector would at least be able to foot the bill for advertising.

Democrat Inconsistency Alert!

Stimulus Worked as Intended: Over a year ago, the President declared the so-called stimulus was “[working as intended](#).” Last month, the [BLS listed](#) the number of unemployed persons at 15.0 million, and the unemployment rate hovering around 10%. According to the bill’s sponsor, H.R. 5019 is another jobs “stimulus” that will “[create more than 168,000 jobs](#).” Since the original stimulus contained around \$4.7 billion for “jobs creation” through weatherization programs, what’s not to believe?

RSC Bonus Background - The Influence of Oprah: It is hard to deny the influence Oprah Winfrey has on the American public. The Obama campaign knew it was a “[big deal](#)” when she endorsed it, but it is still hard to believe that she is a driving force behind public policy decisions at the White House.

After the so-called “stimulus” proved to be a failure just six months into the experiment, the Administration and Democrat Congress reached into [Oprah’s playbook](#) and signed the “Cash for Clunkers” bill into law. Another year later - and the “stimulus” still a [huge embarrassing failure](#) - the administration is retooling the simple idea of handing out billions to consumers to now target [home improvement projects](#) in order to buy popularity through H.R. 5019.

Committee Action: On April 14, 2010, the bill was referred to the Committee on Energy and Commerce and Committee on Ways and Means. On April 15, 2009, the Committee on Energy and Commerce held a mark-up and ordered the bill reported, as amended, by the yeas and nays of a vote of [30 - 17](#).

Administration Position: In a Statement of Administration Policy ([SAP](#)), “the Administration strongly supports House passage of H.R. 5019, the Home Star Energy Retrofit Act of 2010. The Administration shares the sponsors’ commitment to establishing a program of incentives to encourage homeowners to make their homes more energy-efficient. H.R. 5019 will provide consumers up-front rebates for many home energy-saving investments.”

Cost to Taxpayers: According to CBO, H.R. 5019 authorizes \$6.6 billion over the FY 2010 – FY 2011 period. CBO estimates the bill “would cost \$350 million in 2010 and \$6.6 billion over the 2010-2015 period, assuming appropriation of the authorized amounts.”

Does the Bill Expand the Size and Scope of the Federal Government? Yes, the bill establishes a new program through the Department of Energy and Environmental Protection Agency to provide cash rebates for home improvement projects with the goal of improving energy efficiency.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates? No.

Does the Bill Contain Any Federal Encroachment into State or Local Authority in Potential Violation of the 10th Amendment? Yes, the bill establishes a new spending program directing states to implement a rebate program for residential homeowners to purchase federally approved “energy efficient” products or make upgrades to their dwelling. By directly *participating* in the role of interstate commerce, the Congress is arguably exceeding its constitutional authority to establish the program. Additionally, by redistributing over \$ 6 billion in taxpayer dollars in less than two years, states may have the concern the federal government will not be able to fairly or responsibly implement the programs authorized under H.R. 5019. The “weatherization” program established under the so-called “stimulus” has awarded grants in only 10 states. It is reasonable to assume states will get the same unequal treatment by the Department of Energy under H.R. 5019.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits? According to Committee Report 111-294, H.R. 5019 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI of the Rules of the House of Representatives.

Constitutional Authority: Committee Report 111-469 cites Article I, section 8, clause 3, which grants Congress the power to regulate commerce with foreign nations, among the several states, and with the Indian Tribes, in the provisions of Article I, section 8, clause 1, that relate to expending funds to provide for the general welfare of the United States, and in the provisions of Article I, section 8, clause 18, which grants Congress the power to make all laws necessary and proper to carry into execution the powers enumerated in section 8 and all other powers vested by the Constitution in the government of the United States.

Some conservatives have expressed concern the Constitution, in Article I, Section 8, Clause 3, grants ***Congress the power to regulate interstate commerce, NOT participate in it.***

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